



**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

NOTICE OF INVITATION TO FILE AMICUS BRIEFS

**Law Court invites amicus briefs regarding
the right of an accused
under Maine law and the Maine Constitution
to notice of the right to counsel
before being interrogated while in custody**

The Maine Supreme Judicial Court, sitting as the Law Court, invites briefs of amici curiae in the appeal of *State of Maine v. Derric McLain*, Law Court docket number Pen-21-256. McClain appeals from his criminal conviction on the basis, *inter alia*, that the trial court erred in denying his motion to suppress statements he made while in custody. Specifically, after McLain was brought to jail for questioning, he was given a warning consistent with *Miranda v. Arizona*, 384 U.S. 436, 465 (1966), immediately after which the following colloquy took place:

Agent: Now, having all those rights which I explained to you in mind, do you wish to answer questions at this time?

McLain: Depends on the questions.

Agent: Well, I mean, it's . . . Yes or no? I know "it depends" but, I--I--I understand that, but, that's what I, you know, that's why I read you your rights.

McLain: Is there a lawyer here?

Agent: No.

McLain: What do you want . . . what, what questions?

A brief discussion ensued about the charges and warrants, after which an agent again asked whether McLain wanted to answer questions, McLain responded, "That depends, obviously," and two agents then immediately asked McLain substantive questions about drug use and trafficking.

The Law Court recently summarized the status of Maine law with respect to *Miranda* in general in *State v. Athayde*, 2022 ME 41, ¶ 37 n. 7, 277 A.3d 387:

In applying article I, section 6 of the Maine Constitution, we have not, to date, made the delivery of *Miranda* warnings a requisite for a statement made in a custodial interrogation to be admissible. *See State v. McKechnie*, 1997 ME 40, ¶ 7 n.1, 690 A.2d 976 (citing *State v. Gardner*, 509 A.2d 1160, 1162-1163 (Me. 1986)). That said, informing (or not informing) defendants of their right against self-incrimination has always been considered an important factor under Maine law in assessing the voluntariness of their statements or testimony. *See State v. Gilman*, 51 Me. 206, 225 (1862) ("Great care should undoubtedly be taken to protect the rights of the accused. . . . He should be fully informed of his legal rights, when called upon or admitted to testify as a witness in a matter in which his guilt is involved."); *id.* at 223-24 ("[W]hen [a defendant] is fully apprised of his rights, and informed that he is under no legal obligation to disclose any facts prejudicial to himself, or to give evidence against

himself, and then deliberately makes statements under oath, no good reason is perceived why such statements should not be given in evidence against him. He may testify as freely as he may speak."). A purpose of *Miranda* warnings is, notably, to counteract the presumptively coercive context of custodial interrogation. See *Miranda*, 384 U.S. at 467-469; *Duckworth v. Eagan*, 492 U.S. 195, 202, 109 S. Ct. 2875, 106 L. Ed. 2d 166 (1989); *Salinas v. Texas*, 570 U.S. 178, 184-85, 133 S. Ct. 2174, 186 L. Ed. 2d 376 (2013). It follows, therefore, that the recitation of the defendant's rights followed by waivers are cogent factors supporting the conclusion that a confession is voluntary. See *State v. Akers*, 2021 ME 43, ¶ 47, 259 A.3d 127 (listing "the recitation of *Miranda* warnings" as one consideration in the totality of the circumstances to be considered in assessing the voluntariness of a defendant's statement (quotation marks omitted)).

The Law Court has adopted the "primacy approach," which is a policy of judicial restraint to forbear from ruling on federal constitutional issues before consulting our state constitution. *State v. Cadman*, 476 A.2d 1148, 1150 (1984) (citations omitted). In light of that approach, the Court invites amicus briefs responsive to the following questions:

1. Does Maine law, as opposed to federal law, require that the accused be notified of his or her right to counsel, and that it be waived, before being interrogated in a custodial setting?
2. If the answer to question #1 is yes, is this duty to notify the accused of the right to counsel required under article I, section 6 or any other provision of the Maine Constitution?
3. If a warning is provided, and the accused then invokes his or her right to counsel but does so ambiguously, under Maine law may the authorities continue to question the person or must they

stop all questioning except to clarify whether the accused is unequivocally waiving or invoking the right to counsel?

The parties' initial appellate briefs, the appendix, and the recording of the oral argument that was held in May 2022 are available on the Court's website at www.courts.maine.gov/quick/mclain.

An amicus brief may be filed by or on behalf of any individual, entity, or group of individuals and/or entities without separate leave of the Court. Any amicus brief must be filed on or before **October 18, 2022**. An amicus brief must be filed at the address listed below and must comply with M.R. App. P. 7A. In addition to filing and serving the required number of copies, any amicus must send a copy of the brief electronically, as a single native or text-based .pdf file, to the Clerk of the Law Court at lawcourt.clerk@courts.maine.gov.

Dated: September 13, 2022

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